IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.5371/1997
M/s Khemka Cement Pvt Ltd. Vs The State of Rajasthan & Ors.

Date of Order :: 25th July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri L. L. Jain, for petitioner.
Shri B. N. Sandu, for the respondent.

This writ petition has been filed by the petitioner challenging the demand raised by the respondent vide letter dated 26.09.2005 for Rs. 1,31,000/-. The petitioner earlier filed a writ petition bearing S. B. Civil Writ Petition No. 1634/1990. At that time, demanded amount was Rs. 6,57,000/- and this Court vide judgment dated 07.03.1995 disposed of the writ petition with a liberty to the petitioner to file appeal against the demand notice. The petitioner then filed appeal under Rule 43 of Rajasthan Minor

Minerals Concession Rules, 1986 (hereinafter referred to as 'the Rules') before the Additional Commissioner (Mines), Jaipur. In the appeal proceedings, it transpired that the earlier demand was not correct because calculation of the royalty and penalty amount was not correctly made. A direction was, therefore, given to issue a fresh demand notice and consequently the Assistant Engineer, Kotputali vide order dated 22.02.1990 issued correct demand notice of Rs.1,31,346/-. This order was again challenged in the appeal. The appellate authority vide his order dated 28.09.1996 dismissed the appeal. Hence, this writ petition.

I have heard Shri L.L. Jain, learned counsel for the petitioner and

Shri B.N. Sandu, learned Additional Government Advocate for the respondents.

Shri L.L. Jain, learned counsel for the petitioner argued that the petitioner-company purchased sand for which royalty and penalty is being demanded by the respondent. Sand was purchased for manufacturing cement from the owner of the land himself, clay therein being surplus stock of that area and, therefore, no mining activity was involved in lifting of such clay. He argued that if at all any royalty/penalty was to be recovered, the mining department should have proceeded against the supplier/owner of the land and not against the petitioner. Question raised in the present petition is squarely covered by the decision of coordinate bench of this

Court in S.B. Civil Writ Petition No. 6676/1997 (M/s Saluja Cement Pvt. Ltd. Vs State of Raj. & Ors.) decided on 19.05.2006. It was therefore, prayed that petition be allowed and the impugned demand be set aside.

On the other hand, Shri B.N. Sandu, the learned Additional Government Advocate argued that sand/clay could not have been withdrawn from below the surface of the land without paying amount of royalty. Since the petitioner had used such item in bulk without making payment of royalty, it was liable to make payment of four times penalty as per Rule-69 of the Rules. Appeal of the petitioner has rightly been rejected. The learned counsel for the respondents, however, could not dispute that the issues raised in this

writ petition is squarely covered by the decision of the coordinate bench in M/s Saluja Cement Pvt. Ltd., supra.

Having considered the rival arguments advanced by learned counsel for the parties and perused the material on record, I find that the controversy herein is indeed covered by the judgment of coordinate bench of this Court in M/s Saluja Cement Pvt. Ltd. (Supra), in para 9 of which it was held as under:

> “I am of the view that unauthorised mining as well as purchase of the mineral from unauthorised mining excavators both are to be dealt with strictly in accordance with said Rule 48 and Rule 69 of the Rules of 1986. Therefore, it was the duty of the Mining Engineer to call the seller, who unauthorisedly excavated the mineral, in the same proceeding to show cause as to why appropriate action under Rule 48 (1) of the Rules of 1986 may not be taken against him. Many times it is very difficult for the purchaser to know the fact that

> whether the seller is having a valid mining lease or not or even if he is having mining lease, then also indulging in unauthorized excavation contrary to the terms and conditions of the lease. The submission of the counsel for the respondents that the stockist is liable for the whole transaction, is not correct.“

In view of the aforesaid, the writ petition is partly allowed and the impugned demand notice is upheld to the extent that petitioner shall be liable to pay only actual cost of minerals as per Rule-69 of the Rules and that the Mining Engineer concerned, shall be free to take action against the land owners/sellers of the sand for unauthorised excavation of sand/clay to decide the question with regard to payment of penalty afresh in the light of the observations made above.

(Mohammad Rafiq),J.

DJ/-